

published by the agency in the Federal Register after January 1, 2000.

(b) Report

Not later than March 1, 2001, each Federal banking agency shall submit to the Congress a report that describes how the agency has complied with subsection (a) of this section.

(c) Definition

For purposes of this section, the term “Federal banking agency” has the meaning given that term in section 1813 of this title.

(Pub. L. 106–102, title VII, § 722, Nov. 12, 1999, 113 Stat. 1471.)

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of title III of Pub. L. 103–322 which comprises this chapter.

CHAPTER 49—HOMEOWNERS PROTECTION

Sec.	
4901.	Definitions.
4902.	Termination of private mortgage insurance.
4903.	Disclosure requirements.
4904.	Notification upon cancellation or termination.
4905.	Disclosure requirements for lender paid mortgage insurance.
4906.	Fees for disclosures.
4907.	Civil liability.
4908.	Effect on other laws and agreements.
4909.	Enforcement.
4910.	Construction.

§ 4901. Definitions

In this chapter, the following definitions shall apply:

(1) Adjustable rate mortgage

The term “adjustable rate mortgage” means a residential mortgage that has an interest rate that is subject to change. A residential mortgage that: (A) does not fully amortize over the term of the obligation; and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this chapter.

(2) Cancellation date

The term “cancellation date” means—

(A) with respect to a fixed rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—

(i) based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, reaches 80 percent of the original value of the property securing the loan; and

(B) with respect to an adjustable rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—

(i) based solely on the amortization schedule then in effect for that mortgage,

and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, first reaches 80 percent of the original value of the property securing the loan.

(3) Fixed rate mortgage

The term “fixed rate mortgage” means a residential mortgage that has an interest rate that is not subject to change.

(4) Good payment history

The term “good payment history” means, with respect to a mortgagor, that the mortgagor has not—

(A) made a mortgage payment that was 60 days or longer past due during the 12-month period beginning 24 months before the later of (i) the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title; or

(B) made a mortgage payment that was 30 days or longer past due during the 12-month period preceding the later of (i) the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title.

(5) Initial amortization schedule

The term “initial amortization schedule” means a schedule established at the time at which a residential mortgage transaction is consummated with respect to a fixed rate mortgage, showing—

(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the amortization period of the loan; and

(B) the unpaid principal balance of the loan after each scheduled payment is made.

(6) Amortization schedule then in effect

The term “amortization schedule then in effect” means, with respect to an adjustable rate mortgage, a schedule established at the time at which the residential mortgage transaction is consummated or, if such schedule has been changed or recalculated, is the most recent schedule under the terms of the note or mortgage, which shows—

(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the remaining amortization period of the loan; and

(B) the unpaid balance of the loan after each such scheduled payment is made.

(7) Midpoint of the amortization period

The term “midpoint of the amortization period” means, with respect to a residential mortgage transaction, the point in time that is halfway through the period that begins upon the first day of the amortization period established at the time a residential mortgage transaction is consummated and ends upon the completion of the entire period over which the mortgage is scheduled to be amortized.

(8) Mortgage insurance

The term “mortgage insurance” means insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, an individual mortgage or loan involved in a residential mortgage transaction.

(9) Mortgage insurer

The term “mortgage insurer” means a provider of private mortgage insurance, as described in this chapter, that is authorized to transact such business in the State in which the provider is transacting such business.

(10) Mortgagee

The term “mortgagee” means the holder of a residential mortgage at the time at which that mortgage transaction is consummated.

(11) Mortgagor

The term “mortgagor” means the original borrower under a residential mortgage or his or her successors or assignees.

(12) Original value

The term “original value”, with respect to a residential mortgage transaction, means the lesser of the sales price of the property securing the mortgage, as reflected in the contract, or the appraised value at the time at which the subject residential mortgage transaction was consummated. In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction.

(13) Private mortgage insurance

The term “private mortgage insurance” means mortgage insurance other than mortgage insurance made available under the National Housing Act [12 U.S.C. 1701 et seq.], title 38, or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(14) Residential mortgage

The term “residential mortgage” means a mortgage, loan, or other evidence of a security interest created with respect to a single-family dwelling that is the principal residence of the mortgagor.

(15) Residential mortgage transaction

The term “residential mortgage transaction” means a transaction consummated on or after the date that is 1 year after July 29, 1998, in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against a single-family dwelling that is the principal residence of the mortgagor to finance the acquisition, initial construction, or refinancing of that dwelling.

(16) Servicer

The term “servicer” has the same meaning as in section 2605(i)(2) of this title, with respect to a residential mortgage.

(17) Single-family dwelling

The term “single-family dwelling” means a residence consisting of 1 family dwelling unit.

(18) Termination date

The term “termination date” means—

(A) with respect to a fixed rate mortgage, the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan; and

(B) with respect to an adjustable rate mortgage, the date on which the principal balance of the mortgage, based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan.

(Pub. L. 105-216, § 2, July 29, 1998, 112 Stat. 897; Pub. L. 106-569, title IV, §§ 402(a)(1), (b), 405(a), 406(b)-(d), Dec. 27, 2000, 114 Stat. 2956, 2958, 2959.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 105-216, July 29, 1998, 112 Stat. 897, known as the Homeowners Protection Act of 1998. For complete classification of this Act to the Code, see Short Title note below and Tables.

The National Housing Act, referred to in par. (13), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in par. (13), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

AMENDMENTS

2000—Par. (1). Pub. L. 106-569, § 402(b), inserted at end “A residential mortgage that: (A) does not fully amortize over the term of the obligation; and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this chapter.”

Par. (2)(B)(i). Pub. L. 106-569, § 402(a)(1)(A), substituted “the amortization schedule then in effect” for “amortization schedules”.

Par. (4)(A). Pub. L. 106-569, § 405(a)(1), inserted “the later of (i)” before “the date on which the mortgage” and “, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title” before the semicolon.

Par. (4)(B). Pub. L. 106-569, § 405(a)(2), inserted “the later of (i)” before “the date on which the mortgage” and “, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title” before period at end.

Par. (6). Pub. L. 106-569, § 402(a)(1)(D), added par. (6). Former par. (6) redesignated (8).

Par. (7). Pub. L. 106-569, § 406(b), added par. (7). Former par. (7) redesignated (9).

Pars. (8) to (11). Pub. L. 106-569, § 402(a)(1)(C), redesignated pars. (6) to (9) as (8) to (11), respectively. Former pars. (10) and (11) redesignated (12) and (13), respectively.

Par. (12). Pub. L. 106-569, § 406(c), inserted “transaction” after “a residential mortgage” and inserted at end “In the case of a residential mortgage transaction for refinancing the principal residence of the mortga-

gor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction.”

Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (10) as (12). Former par. (12) redesignated (14).

Par. (13). Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (11) as (13). Former par. (13) redesignated (15).

Par. (14). Pub. L. 106-569, § 406(d)(1), substituted “principal residence of the mortgagor” for “primary residence of the mortgagor”.

Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (12) as (14). Former par. (14) redesignated (16).

Par. (15). Pub. L. 106-569, § 406(d)(2), substituted “principal residence of the mortgagor” for “primary residence of the mortgagor”.

Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (13) as (15). Former par. (15) redesignated (17).

Par. (16). Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (14) as (16). Former par. (16) redesignated (18).

Par. (16)(B). Pub. L. 106-569, § 402(a)(1)(B), substituted “the amortization schedule then in effect” for “amortization schedules”.

Pars. (17), (18). Pub. L. 106-569, § 402(a)(1)(C), redesignated pars. (15) and (16) as (17) and (18), respectively.

EFFECTIVE DATE

Pub. L. 105-216, § 13, July 29, 1998, 112 Stat. 908, provided that: “This Act [enacting this chapter and amending section 1088 of Title 20, Education], other than section 14 [enacting provisions set out as notes under sections 1441a and 1831q of this title and amending provisions set out as a note under section 1831q of this title], shall become effective 1 year after the date of enactment of this Act [July 29, 1998].”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-569, title IV, § 401, Dec. 27, 2000, 114 Stat. 2956, provided that: “This title [amending this section and sections 4902, 4903, and 4905 of this title] may be cited as the ‘Private Mortgage Insurance Technical Corrections and Clarification Act’.”

SHORT TITLE

Pub. L. 105-216, § 1(a), July 29, 1998, 112 Stat. 897, provided that: “This Act [enacting this chapter, amending section 1088 of Title 20, Education, enacting provisions set out as notes under sections 1441a and 1831q of this title, and amending provisions set out as a note under section 1831q of this title] may be cited as the ‘Homeowners Protection Act of 1998’.”

§ 4902. Termination of private mortgage insurance

(a) Borrower cancellation

A requirement for private mortgage insurance in connection with a residential mortgage transaction shall be canceled on the cancellation date or any later date that the mortgagor fulfills all of the requirements under paragraphs (1) through (4), if the mortgagor—

(1) submits a request in writing to the servicer that cancellation be initiated;

(2) has a good payment history with respect to the residential mortgage;

(3) is current on the payments required by the terms of the residential mortgage transaction; and

(4) has satisfied any requirement of the holder of the mortgage (as of the date of a request under paragraph (1)) for—

(A) evidence (of a type established in advance and made known to the mortgagor by the servicer promptly upon receipt of a request under paragraph (1)) that the value of the property securing the mortgage has not

declined below the original value of the property; and

(B) certification that the equity of the mortgagor in the residence securing the mortgage is unencumbered by a subordinate lien.

(b) Automatic termination

A requirement for private mortgage insurance in connection with a residential mortgage transaction shall terminate with respect to payments for that mortgage insurance made by the mortgagor—

(1) on the termination date if, on that date, the mortgagor is current on the payments required by the terms of the residential mortgage transaction; or

(2) if the mortgagor is not current on the termination date, on the first day of the first month beginning after the date that the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction.

(c) Final termination

If a requirement for private mortgage insurance is not otherwise canceled or terminated in accordance with subsection (a) or (b) of this section, in no case may such a requirement be imposed on residential mortgage transactions beyond the first day of the month immediately following the date that is the midpoint of the amortization period of the loan if the mortgagor is current on the payments required by the terms of the mortgage.

(d) Treatment of loan modifications

If a mortgagor and mortgagee (or holder of the mortgage) agree to a modification of the terms or conditions of a loan pursuant to a residential mortgage transaction, the cancellation date, termination date, or final termination shall be recalculated to reflect the modified terms and conditions of such loan.

(e) No further payments

No payments or premiums may be required from the mortgagor in connection with a private mortgage insurance requirement terminated or canceled under this section—

(1) in the case of cancellation under subsection (a) of this section, more than 30 days after the later of—

(A) the date on which a request under subsection (a)(1) of this section is received; or

(B) the date on which the mortgagor satisfies any evidence and certification requirements under subsection (a)(4) of this section;

(2) in the case of termination under subsection (b) of this section, more than 30 days after the termination date or the date referred to in subsection (b)(2) of this section, as applicable; and

(3) in the case of termination under subsection (c) of this section, more than 30 days after the final termination date established under that subsection.

(f) Return of unearned premiums

(1) In general

Not later than 45 days after the termination or cancellation of a private mortgage insur-

ance requirement under this section, all unearned premiums for private mortgage insurance shall be returned to the mortgagor by the servicer.

(2) Transfer of funds to servicer

Not later than 30 days after notification by the servicer of termination or cancellation of private mortgage insurance under this chapter with respect to a mortgagor, a mortgage insurer that is in possession of any unearned premiums of that mortgagor shall transfer to the servicer of the subject mortgage an amount equal to the amount of the unearned premiums for repayment in accordance with paragraph (1).

(g) Exceptions for high risk loans

(1) In general

The termination and cancellation provisions in subsections (a) and (b) of this section do not apply to any residential mortgage transaction that, at the time at which the residential mortgage transaction is consummated, has high risks associated with the extension of the loan—

(A) as determined in accordance with guidelines published by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, in the case of a mortgage loan with an original principal balance that does not exceed the applicable annual conforming loan limit for the secondary market established pursuant to section 1454(a)(2) of this title, so as to require the imposition or continuation of a private mortgage insurance requirement beyond the terms specified in subsection (a) or (b) of this section; or

(B) as determined by the mortgagee in the case of any other mortgage, except that termination shall occur—

(i) with respect to a fixed rate mortgage, on the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan; and

(ii) with respect to an adjustable rate mortgage, on the date on which the principal balance of the mortgage, based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan.

(2) Termination at midpoint

A private mortgage insurance requirement in connection with a residential mortgage transaction described in paragraph (1) shall terminate in accordance with subsection (c) of this section.

(3) Rule of construction

Nothing in this subsection may be construed to require a residential mortgage or residential mortgage transaction described in para-

graph (1)(A) to be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(4) GAO report

Not later than 2 years after July 29, 1998, the Comptroller General of the United States shall submit to the Congress a report describing the volume and characteristics of residential mortgages and residential mortgage transactions that, pursuant to paragraph (1) of this subsection, are exempt from the application of subsections (a) and (b) of this section. The report shall—

(A) determine the number or volume of such mortgages and transactions compared to residential mortgages and residential mortgage transactions that are not classified as high-risk for purposes of paragraph (1); and

(B) identify the characteristics of such mortgages and transactions that result in their classification (for purposes of paragraph (1)) as having high risks associated with the extension of the loan and describe such characteristics, including—

(i) the income levels and races of the mortgagors involved;

(ii) the amount of the downpayments involved and the downpayments expressed as percentages of the acquisition costs of the properties involved;

(iii) the types and locations of the properties involved;

(iv) the mortgage principal amounts; and

(v) any other characteristics of such mortgages and transactions that may contribute to their classification as high risk for purposes of paragraph (1), including whether such mortgages are purchase-money mortgages or refinancings and whether and to what extent such loans are low-documentation loans.

(h) Accrued obligation for premium payments

The cancellation or termination under this section of the private mortgage insurance of a mortgagor shall not affect the rights of any mortgagee, servicer, or mortgage insurer to enforce any obligation of such mortgagor for premium payments accrued prior to the date on which such cancellation or termination occurred.

(Pub. L. 105-216, §3, July 29, 1998, 112 Stat. 899; Pub. L. 106-569, title IV, §§402(a)(2), (c)(1), 403(a), 404, 405(b), (c), Dec. 27, 2000, 114 Stat. 2956-2958.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, §404(1)(A), inserted “or any later date that the mortgagor fulfills all of the requirements under paragraphs (1) through (4)” after “cancellation date” in introductory provisions.

Subsec. (a)(3), (4). Pub. L. 106-569, §404(1)(B)–(D), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(2). Pub. L. 106-569, §405(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “on the date after the termination date on which the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction.”

Subsec. (c). Pub. L. 106-569, §403(a)(1), inserted “on residential mortgage transactions” after “requirement be imposed”.

Subsec. (d). Pub. L. 106-569, § 402(c)(1)(B), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106-569, § 402(c)(1)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1)(B). Pub. L. 106-569, § 404(2), substituted “subsection (a)(4) of this section” for “subsection (a)(3) of this section”.

Subsec. (f). Pub. L. 106-569, § 402(c)(1)(A), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1)(B)(ii). Pub. L. 106-569, § 402(a)(2), substituted “the amortization schedule then in effect” for “amortization schedules”.

Subsec. (g). Pub. L. 106-569, § 402(c)(1)(A), redesignated subsec. (f) as (g).

Subsec. (g)(1). Pub. L. 106-569, § 403(a)(2)(A), struck out “mortgage or” after “do not apply to any residential” in introductory provisions.

Subsec. (g)(2). Pub. L. 106-569, § 403(a)(2)(B), struck out “mortgage or” after “in connection with a residential”.

Subsec. (g)(3). Pub. L. 106-569, § 403(a)(2)(C), substituted “residential mortgage or residential” for “mortgage or”.

Subsec. (h). Pub. L. 106-569, § 405(c), added subsec. (h).

§ 4903. Disclosure requirements

(a) Disclosures for new mortgages at time of transaction

(1) Disclosures for non-exempted transactions

In any case in which private mortgage insurance is required in connection with a residential mortgage transaction (other than a residential mortgage transaction described in section 4902(g)(1) of this title), at the time at which the transaction is consummated, the mortgagee shall provide to the mortgagor—

(A) if the transaction relates to a fixed rate mortgage—

(i) a written initial amortization schedule; and

(ii) written notice—

(I) that the mortgagor may cancel the requirement in accordance with section 4902(a) of this title indicating the date on which the mortgagor may request cancellation, based solely on the initial amortization schedule;

(II) that the mortgagor may request cancellation in accordance with section 4902(a) of this title earlier than provided for in the initial amortization schedule, based on actual payments;

(III) that the requirement for private mortgage insurance will automatically terminate on the termination date in accordance with section 4902(b) of this title, and what that termination date is with respect to that mortgage; and

(IV) that there are exemptions to the right to cancellation and automatic termination of a requirement for private mortgage insurance in accordance with section 4902(g) of this title, and whether such an exemption applies at that time to that transaction; and

(B) if the transaction relates to an adjustable rate mortgage, a written notice that—

(i) the mortgagor may cancel the requirement in accordance with section 4902(a) of this title on the cancellation date, and that the servicer will notify the mortgagor when the cancellation date is reached;

(ii) the requirement for private mortgage insurance will automatically terminate on the termination date, and that on the termination date, the mortgagor will be notified of the termination or that the requirement will be terminated as soon as the mortgagor is current on loan payments; and

(iii) there are exemptions to the right of cancellation and automatic termination of a requirement for private mortgage insurance in accordance with section 4902(g) of this title, and whether such an exemption applies at that time to that transaction.

(2) Disclosures for excepted transactions

In the case of a residential mortgage transaction described in section 4902(g)(1) of this title, at the time at which the transaction is consummated, the mortgagee shall provide written notice to the mortgagor that in no case may private mortgage insurance be required beyond the date that is the midpoint of the amortization period of the loan, if the mortgagor is current on payments required by the terms of the residential mortgage.

(3) Annual disclosures

If private mortgage insurance is required in connection with a residential mortgage transaction, the servicer shall disclose to the mortgagor in each such transaction in an annual written statement—

(A) the rights of the mortgagor under this chapter to cancellation or termination of the private mortgage insurance requirement; and

(B) an address and telephone number that the mortgagor may use to contact the servicer to determine whether the mortgagor may cancel the private mortgage insurance.

(4) Applicability

Paragraphs (1) through (3) shall apply with respect to each residential mortgage transaction consummated on or after the date that is 1 year after July 29, 1998.

(b) Disclosures for existing mortgages

If private mortgage insurance was required in connection with a residential mortgage entered into at any time before the effective date of this chapter, the servicer shall disclose to the mortgagor in each such transaction in an annual written statement—

(1) that the private mortgage insurance may, under certain circumstances, be canceled by the mortgagor (with the consent of the mortgagee or in accordance with applicable State law); and

(2) an address and telephone number that the mortgagor may use to contact the servicer to determine whether the mortgagor may cancel the private mortgage insurance.

(c) Inclusion in other annual notices

The information and disclosures required under subsection (b) of this section and subsection (a)(3) of this section may be provided on the annual disclosure relating to the escrow account made as required under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.], or as part of the annual disclosure of in-

terest payments made pursuant to Internal Revenue Service regulations, and on a form promulgated by the Internal Revenue Service for that purpose.

(d) Standardized forms

The mortgagee or servicer may use standardized forms for the provision of disclosures required under this section, which disclosures shall relate to the mortgagor's rights under this chapter.

(Pub. L. 105-216, § 4, July 29, 1998, 112 Stat. 902; Pub. L. 106-569, title IV, §§ 402(c)(2), 403(b), Dec. 27, 2000, 114 Stat. 2957.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), is 1 year after July 29, 1998, see section 13 of Pub. L. 105-216, set out as an Effective Date note under section 4901 of this title.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (c), is Pub. L. 93-533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§ 2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106-569, §§ 402(c)(2)(A)(i), 403(b)(1)(A), substituted “residential mortgage transaction (other than a residential mortgage transaction described in section 4902(g)(1) of this title)” for “residential mortgage or mortgage transaction (other than a mortgage or mortgage transaction described in section 4902(f)(1) of this title)” in introductory provisions.

Subsec. (a)(1)(A)(ii)(IV), (B)(iii). Pub. L. 106-569, § 402(c)(2)(A)(ii), (iii), substituted “section 4902(g) of this title” for “section 4902(f) of this title”.

Subsec. (a)(2). Pub. L. 106-569, §§ 402(c)(2)(B), 403(b)(1)(B), substituted “residential mortgage transaction” for “mortgage or mortgage transaction” and “section 4902(g)(1) of this title” for “section 4902(f)(1) of this title”.

Subsec. (c). Pub. L. 106-569, § 403(b)(2), substituted “subsection (a)(3) of this section” for “paragraphs (1)(B) and (3) of subsection (a) of this section”.

Subsec. (d). Pub. L. 106-569, § 403(b)(3), inserted before period at end “, which disclosures shall relate to the mortgagor's rights under this chapter”.

§ 4904. Notification upon cancellation or termination

(a) In general

Not later than 30 days after the date of cancellation or termination of a private mortgage insurance requirement in accordance with this chapter, the servicer shall notify the mortgagor in writing—

(1) that the private mortgage insurance has terminated and that the mortgagor no longer has private mortgage insurance; and

(2) that no further premiums, payments, or other fees shall be due or payable by the mortgagor in connection with the private mortgage insurance.

(b) Notice of grounds

(1) In general

If a servicer determines that a mortgage did not meet the requirements for termination or cancellation of private mortgage insurance under subsection (a) or (b) of section 4902 of this title, the servicer shall provide written notice to the mortgagor of the grounds relied

on to make the determination (including the results of any appraisal used to make the determination).

(2) Timing

Notice required by paragraph (1) shall be provided—

(A) with respect to cancellation of private mortgage insurance under section 4902(a) of this title, not later than 30 days after the later of—

(i) the date on which a request is received under section 4902(a)(1) of this title; or

(ii) the date on which the mortgagor satisfies any evidence and certification requirements under section 4902(a)(3)¹ of this title; and

(B) with respect to termination of private mortgage insurance under section 4902(b) of this title, not later than 30 days after the scheduled termination date.

(Pub. L. 105-216, § 5, July 29, 1998, 112 Stat. 903.)

REFERENCES IN TEXT

Section 4902(a)(3) of this title, referred to in subsec. (b)(2)(A)(ii), was redesignated section 4902(a)(4) of this title by Pub. L. 106-569, title IV, § 404(1)(C), Dec. 27, 2000, 114 Stat. 2958.

§ 4905. Disclosure requirements for lender paid mortgage insurance

(a) Definitions

For purposes of this section—

(1) the term “borrower paid mortgage insurance” means private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by the borrower;

(2) the term “lender paid mortgage insurance” means private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by a person other than the borrower; and

(3) the term “loan commitment” means a prospective mortgagee's written confirmation of its approval, including any applicable closing conditions, of the application of a prospective mortgagor for a residential mortgage loan.

(b) Exclusion

Sections 4902 through 4904 of this title do not apply in the case of lender paid mortgage insurance.

(c) Notices to mortgagor

In the case of lender paid mortgage insurance that is required in connection with a residential mortgage transaction—

(1) not later than the date on which a loan commitment is made for the residential mortgage transaction, the prospective mortgagee shall provide to the prospective mortgagor a written notice—

(A) that lender paid mortgage insurance differs from borrower paid mortgage insurance, in that lender paid mortgage insurance may not be canceled by the mortgagor,

¹ See References in Text note below.

while borrower paid mortgage insurance could be cancelable by the mortgagor in accordance with section 4902(a) of this title, and could automatically terminate on the termination date in accordance with section 4902(b) of this title;

(B) that lender paid mortgage insurance—

(i) usually results in a residential mortgage having a higher interest rate than it would in the case of borrower paid mortgage insurance; and

(ii) terminates only when the residential mortgage is refinanced (under the meaning given such term in the regulations issued by the Board of Governors of the Federal Reserve System to carry out the Truth in Lending Act (15 U.S.C. 1601 et seq.)), paid off, or otherwise terminated; and

(C) that lender paid mortgage insurance and borrower paid mortgage insurance both have benefits and disadvantages, including a generic analysis of the differing costs and benefits of a residential mortgage in the case lender paid mortgage insurance versus borrower paid mortgage insurance over a 10-year period, assuming prevailing interest and property appreciation rates;

(D) that lender paid mortgage insurance may be tax-deductible for purposes of Federal income taxes, if the mortgagor itemizes expenses for that purpose; and

(2) not later than 30 days after the termination date that would apply in the case of borrower paid mortgage insurance, the servicer shall provide to the mortgagor a written notice indicating that the mortgagor may wish to review financing options that could eliminate the requirement for private mortgage insurance in connection with the residential mortgage transaction.

(d) Standard forms

The servicer of a residential mortgage transaction may develop and use a standardized form or forms for the provision of notices to the mortgagor, as required under subsection (c) of this section.

(Pub. L. 105-216, §6, July 29, 1998, 112 Stat. 904; Pub. L. 106-569, title IV, §§403(c), 406(a), Dec. 27, 2000, 114 Stat. 2957, 2959.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec.(c)(1)(B)(ii), is title I of Pub. L. 90-321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106-569, §403(c)(1)(A), struck out “a residential mortgage or” before “a residential mortgage transaction” in introductory provisions.

Subsec. (c)(1)(B)(ii). Pub. L. 106-569, §406(a), inserted “(under the meaning given such term in the regulations issued by the Board of Governors of the Federal Reserve System to carry out the Truth in Lending Act (15 U.S.C. 1601 et seq.))” after “refinanced”.

Subsec. (c)(2). Pub. L. 106-569, §403(c)(1)(B), inserted “transaction” before period at end.

Subsec. (d). Pub. L. 106-569, §403(c)(2), inserted “transaction” after “residential mortgage”.

§ 4906. Fees for disclosures

No fee or other cost may be imposed on any mortgagor with respect to the provision of any notice or information to the mortgagor pursuant to this chapter.

(Pub. L. 105-216, §7, July 29, 1998, 112 Stat. 905.)

§ 4907. Civil liability

(a) In general

Any servicer, mortgagee, or mortgage insurer that violates a provision of this chapter shall be liable to each mortgagor to whom the violation relates for—

(1) in the case of an action by an individual, or a class action in which the liable party is not subject to section 4909 of this title, any actual damages sustained by the mortgagor as a result of the violation, including interest (at a rate determined by the court) on the amount of actual damages, accruing from the date on which the violation commences;

(2) in the case of—

(A) an action by an individual, such statutory damages as the court may allow, not to exceed \$2,000; and

(B) in the case of a class action—

(i) in which the liable party is subject to section 4909 of this title, such amount as the court may allow, except that the total recovery under this subparagraph in any class action or series of class actions arising out of the same violation by the same liable party shall not exceed the lesser of \$500,000 or 1 percent of the net worth of the liable party, as determined by the court; and

(ii) in which the liable party is not subject to section 4909 of this title, such amount as the court may allow, not to exceed \$1,000 as to each member of the class, except that the total recovery under this subparagraph in any class action or series of class actions arising out of the same violation by the same liable party shall not exceed the lesser of \$500,000 or 1 percent of the gross revenues of the liable party, as determined by the court;

(3) costs of the action; and

(4) reasonable attorney fees, as determined by the court.

(b) Timing of actions

No action may be brought by a mortgagor under subsection (a) of this section later than 2 years after the date of the discovery of the violation that is the subject of the action.

(c) Limitations on liability

(1) In general

With respect to a residential mortgage transaction, the failure of a servicer to comply with the requirements of this chapter due to the failure of a mortgage insurer or a mortgagee to comply with the requirements of this chapter, shall not be construed to be a violation of this chapter by the servicer.

(2) Rule of construction

Nothing in paragraph (1) shall be construed to impose any additional requirement or li-

ability on a mortgage insurer, a mortgagee, or a holder of a residential mortgage.

(Pub. L. 105-216, § 8, July 29, 1998, 112 Stat. 905.)

§ 4908. Effect on other laws and agreements

(a) Effect on State law

(1) In general

With respect to any residential mortgage or residential mortgage transaction consummated after the effective date of this chapter, and except as provided in paragraph (2), the provisions of this chapter shall supersede any provisions of the law of any State relating to requirements for obtaining or maintaining private mortgage insurance in connection with residential mortgage transactions, cancellation or automatic termination of such private mortgage insurance, any disclosure of information addressed by this chapter, and any other matter specifically addressed by this chapter.

(2) Protection of existing State laws

(A) In general

The provisions of this chapter do not supersede protected State laws, except to the extent that the protected State laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency.

(B) Inconsistencies

A protected State law shall not be considered to be inconsistent with a provision of this chapter if the protected State law—

(i) requires termination of private mortgage insurance or other mortgage guaranty insurance—

(I) at a date earlier than as provided in this chapter; or

(II) when a mortgage principal balance is achieved that is higher than as provided in this chapter; or

(ii) requires disclosure of information—

(I) that provides more information than the information required by this chapter; or

(II) more often or at a date earlier than is required by this chapter.

(C) Protected State laws

For purposes of this paragraph, the term “protected State law” means a State law—

(i) regarding any requirements relating to private mortgage insurance in connection with residential mortgage transactions;

(ii) that was enacted not later than 2 years after July 29, 1998; and

(iii) that is the law of a State that had in effect, on or before January 2, 1998, any State law described in clause (i).

(b) Effect on other agreements

The provisions of this chapter shall supersede any conflicting provision contained in any agreement relating to the servicing of a residential mortgage loan entered into by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any pri-

vate investor or note holder (or any successors thereto).

(Pub. L. 105-216, § 9, July 29, 1998, 112 Stat. 906.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is 1 year after July 29, 1998, see section 13 of Pub. L. 105-216, set out as an Effective Date note under section 4901 of this title.

§ 4909. Enforcement

(a) In general

Compliance with the requirements imposed under this chapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818]—

(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act [12 U.S.C. 1813(c)(2)]);

(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]); and

(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]);

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)]; and

(3) part C of title V of the Farm Credit Act of 1971 (12 U.S.C. 2261 et seq.), by the Farm Credit Administration in the case of an institution that is a member of the Farm Credit System.

(b) Additional enforcement powers

(1) Violation of this chapter treated as violation of other Acts

For purposes of the exercise by any agency referred to in subsection (a) of this section of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act.

(2) Enforcement authority under other Acts

In addition to the powers of any agency referred to in subsection (a) of this section under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on such agency by law.

(c) Enforcement and reimbursement

In carrying out its enforcement activities under this section, each agency referred to in subsection (a) of this section shall—

(1) notify the mortgagee or servicer of any failure of the mortgagee or servicer to comply with 1 or more provisions of this chapter;

(2) with respect to each such failure to comply, require the mortgagee or servicer, as applicable, to correct the account of the mortgagor to reflect the date on which the mortgage insurance should have been canceled or terminated under this chapter; and

(3) require the mortgagee or servicer, as applicable, to reimburse the mortgagor in an amount equal to the total unearned premiums paid by the mortgagor after the date on which the obligation to pay those premiums ceased under this chapter.

(Pub. L. 105–216, § 10, July 29, 1998, 112 Stat. 907.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(3), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended. Part C of title V of the Act is classified generally to part C (§2261 et seq.) of subchapter V of chapter 23 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

§ 4910. Construction**(a) PMI not required**

Nothing in this chapter shall be construed to impose any requirement for private mortgage insurance in connection with a residential mortgage transaction.

(b) No preclusion of cancellation or termination agreements

Nothing in this chapter shall be construed to preclude cancellation or termination, by agreement between a mortgagor and the holder of the mortgage, of a requirement for private mortgage insurance in connection with a residential mortgage transaction before the cancellation or termination date established by this chapter for the mortgage.

(Pub. L. 105–216, § 11, July 29, 1998, 112 Stat. 908.)

CHAPTER 50—CHECK TRUNCATION

Sec.	
5001.	Findings; purposes.
5002.	Definitions.
5003.	General provisions governing substitute checks.
5004.	Substitute check warranties.
5005.	Indemnity.
5006.	Expedited recredit for consumers.
5007.	Expedited recredit procedures for banks.
5008.	Delays in an emergency.
5009.	Measure of damages.
5010.	Statute of limitations and notice of claim.
5011.	Consumer awareness.
5012.	Effect on other law.
5013.	Variation by agreement.
5014.	Regulations.

Sec.

5015.	Study and report on funds availability.
5016.	Statistical reporting of costs and revenues for transporting checks between reserve banks.
5017.	Evaluation and report by the Comptroller General.
5018.	Depository services efficiency and cost reduction.

§ 5001. Findings; purposes**(a) Findings**

The Congress finds as follows:

(1) In the Expedited Funds Availability Act [12 U.S.C. 4001 et seq.], enacted on August 10, 1987, the Congress directed the Board of Governors of the Federal Reserve System to consider establishing regulations requiring Federal reserve banks and depository institutions to provide for check truncation, in order to improve the check processing system.

(2) In that same Act, the Congress—

(A) provided the Board of Governors of the Federal Reserve System with full authority to regulate all aspects of the payment system, including the receipt, payment, collection, and clearing of checks, and related functions of the payment system pertaining to checks; and

(B) directed that the exercise of such authority by the Board superseded any State law, including the Uniform Commercial Code, as in effect in any State.

(3) Check truncation is no less desirable in 2003 for both financial service customers and the financial services industry, to reduce costs, improve efficiency in check collections, and expedite funds availability for customers than it was over 15 years ago when Congress first directed the Board to consider establishing such a process.

(b) Purposes

The purposes of this chapter are as follows:

(1) To facilitate check truncation by authorizing substitute checks.

(2) To foster innovation in the check collection system without mandating receipt of checks in electronic form.

(3) To improve the overall efficiency of the Nation's payments system.

(Pub. L. 108–100, § 2, Oct. 28, 2003, 117 Stat. 1177.)

REFERENCES IN TEXT

The Expedited Funds Availability Act, referred to in subsec. (a)(1), (2), is title VI of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 635, as amended, which is classified principally to chapter 41 (§4001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Pub. L. 108–100, § 20, Oct. 28, 2003, 117 Stat. 1194, provided that: “This Act [enacting this chapter, amending section 412 of this title, and enacting provisions set out as notes under this section] shall take effect at the end of the 12-month period beginning on the date of the enactment of this Act [Oct. 28, 2003], except as otherwise specifically provided in this Act.”